

Mr. HARKIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. It is the Presiding Officer's pleasure to recognize the Senator from West Virginia.

#### UNANIMOUS-CONSENT AGREEMENT—S. 223

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that at 10:20 a.m., the Senate proceed to the consideration of the pending Nelson of Florida amendment No. 34; that there be 10 minutes of debate equally divided between Senator NELSON of Florida and Senator HUTCHISON or their designees; that upon the use or yielding back of time, the Senate proceed to a vote in relation to the amendment, with no intervening action or debate; that there be no amendments, motions, or points of order to the amendment prior to the vote; and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. ROCKEFELLER. Yes, from me. Yes, it is at 10:20 a.m. on Tuesday. I ask unanimous consent that it be at 10:20 a.m. on Tuesday, February 8, that the Senate proceed to it and then the rest of the request be the order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming.

#### ORDER OF PROCEDURE

Mr. BARRASSO. Mr. President, I ask unanimous consent to enter into a colloquy with my colleague, the Senator from South Carolina, Mr. GRAHAM.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### A SECOND OPINION

Mr. BARRASSO. Mr. President, I come today to the Senate floor as a physician who has practiced medicine in Wyoming for a quarter of a century, taking care of the families of Wyoming, and to do what I have done throughout the past year—provide a doctor's second opinion on this health care law people across the country are now coming to grips with as they finally are realizing what is in the bill or, as the former Speaker of the House, NANCY PELOSI, once said: First you have to pass it before you get to find out what is in it.

People are finding out what is in it, and people all across the country are

not happy. We know what the American people want. I know what the people of Wyoming want in terms of health care. They want the care they need from the doctor they want at a cost they can afford. That was the goal many of us had over a year ago when we started this discussion and debate on the Senate floor. What ultimately got passed—and many people believe crammed down the throats of the American people—is now a health care law where people are at risk of losing what they want and what they have.

The promises made by the President are such that they have turned to be, in many ways, unfulfilled. The President said this would actually drive down the cost of care—the health care law—that insurance rates would go down \$2,500 per family. What people have seen all across the country is the cost of their health care insurance rates going up instead of down. The President said: If you like the care you have, you can keep it. Now we know that a majority of people who get their health insurance through their work are not going to be able to keep the coverage they have liked.

So I come to the floor with my colleague, Senator GRAHAM, because we have introduced a bill, S. 244, the State Health Care Choice Act, which allows States to make a decision to say: Is this something we want in our State?

I will turn to my colleague from South Carolina before getting into the specifics. I know the Senator has visited with his Governor about the concerns his Governor has, a newly elected Governor who has concerns and actually addressed those concerns with the President about the health care law and the mandates on the people of South Carolina.

So I would ask my friend and colleague, are there things we as a body ought to be considering to make life easier for the people of his home State of South Carolina? And I can talk about things for Wyoming as well.

Mr. GRAHAM. Yes. If I may, Mr. President.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. No. 1, Senator BARRASSO, who is an orthopedic surgeon, has been a great addition to the Republican conference and to the Senate as a whole. He is a doctor and has practiced medicine longer than he has been in politics, I am sure, and he sees this problem from the physician's point of view, from the patient's point of view. And our Presiding Officer was recently a Governor.

Here is what my Governor is telling me: that Medicaid is a program that needs to be reformed, not expanded the way we are doing it. The second largest expense to the State budget in South Carolina is Medicaid matching money.

For those who are home who may be watching, Medicaid is a program for low-income Americans. It is a Federal program and a State program, but it is a Federal Government mandate that if

you reach a certain income level, you are eligible for Medicaid services to be administered by the States. But, quite frankly, the flexibility the States have is very limited, and this bill, the Obama health care bill, expands Medicaid eligibility to the point that 29 percent of the people in South Carolina would be Medicaid eligible.

Our State has an \$850 million shortfall in our budget. I think Wyoming is in pretty good shape, but I think we are probably closer to the average State. We have had a dramatic decrease in revenues, and the cost of complying with the Medicaid expansion in this bill would be \$1 billion to a State that cannot afford it. I am sure West Virginia is very similar.

So here is my commitment to the body. I would like to give the States an opportunity to speak as to whether they want the individual mandate, the Medicaid expansion, and employer mandate that I think adds a lot of cost to businesses that will decrease job opportunities at a time when South Carolina needs every job it can get.

But one thing we could do by passing this legislation is get this debate out of Washington, where everybody has kind of dug in their heels, and listen to the people. That is the one thing we have not been able to do.

This bill passed under the cover of darkness on Christmas Eve in a process that is not reflective of the hope and change we all would like to have. It was the worst of Washington. It is not as if the Republican Party has never, behind closed doors, passed bills on a party line. But we are all trying to break that formula. And this bill passed on a party-line vote on Christmas Eve. To get the 60th vote, quite frankly, was unseemly.

So what I am hearing from my Governor is, please give me some relief from a Medicaid Program that is drowning my State.

So after this opportunity comes to take the debate to the State level, I would like to join with Senator BARRASSO and the Presiding Officer and anyone else in this body who wants to come up with a way to fix Medicaid before it bankrupts all the States.

So this opt-out approach I think would make the debate more meaningful. It is not just about what people in Washington think; it is about what America wants and what Americans think. The best way to get their opinion is to allow them to speak at the State level.

So if my colleagues on the other side believe this is a great bill, then give other people a chance to validate what you think. We may be wrong. Senator BARRASSO and I may be wrong. We may be hearing criticism from this bill that is very limited and unique to Wyoming and South Carolina. I don't think so, but we will never know if we don't give people the chance to speak.

That is what this bill does. It allows States, if they choose, to opt out of the individual mandate and the employer mandate of Medicaid expansion.

What is my colleague from Wyoming hearing about the effect of this bill on the State of Wyoming, and where do you think we should go as a nation?

Mr. BARRASSO. The people of Wyoming overwhelmingly want the opportunity to remove themselves from the heavy burden of the Obama-passed and supported health care law. There are huge expenses. The Medicaid mandate is huge.

Mr. GRAHAM. Mr. President, if I could interrupt and ask the Senator from Wyoming about waivers that have been given. Can the Senator tell us a little bit about the waivers that have been granted? Aren't we basically allowing a State to request a waiver by our bill?

Mr. BARRASSO. We are doing exactly that. As of last week, the Secretary of Health and Human Services has given—just last week—500 new waivers to allow individuals who get their insurance through work, and now a total of 729 waivers affecting 2.2 million people to opt out—individuals to opt out—of the specific requirement.

I think States ought to have the right to make decisions about the Medicaid mandate, about the individual mandate that requires everyone to buy government-approved health insurance. It is a mandate. Congress is telling people they have to buy government-approved health insurance. I think it is unconstitutional. The Supreme Court will ultimately decide. People will get penalized. There are going to be IRS agents checking to make sure people have this government-mandated and government-approved health insurance. I think people ought to be able to—the State ought to decide if they are going to make every employer in the State—the business creators, the entities that hire people, the small businesses, the job creators—I think the State ought to have the right to make the decision to say, Are we going to make those employers—force them—to provide government-approved health insurance.

It is a big cost for businesses that are trying to hire people. I think States ought to be able to opt out of the benefit mandate which defines how much insurance somebody has to have. Also, in many cases it is overinsurance—more than they need, more than they want, and more than they can afford.

Mr. GRAHAM. Mr. President, I ask the Senator, what percentage of the waivers involve union plans?

Mr. BARRASSO. Well, of the 2.2 million people who have gotten waivers by the Secretary of Health and Human Services—and, as I say, you need to have friends in high places if you want a waiver, because I know the small business owners in my State, and probably in the State of the Senator from South Carolina as well, couldn't get to the Secretary of Health and Human Services to get these waivers. But 860,000 waivers have gone to members of 166 different unions' benefit programs. It is interesting, because across the country unions have received 40

percent of the waivers, yet union members are only 7 percent of the workforce. So it seems a disproportionate number of these waivers have been given to members of the unions.

What I find so intriguing is that these are the same people from the same unions that lobbied so hard to get this health care law passed. Now that they know what is in it, they don't want it to apply to them. That is a concern about which I think the American people will say, Well, if all of these different union members can get a waiver, why can't I? Why can't States be able to opt out as well?

In a national poll last Friday, February 4, the majority of Americans said States ought to have the right to opt out of the health care law. A majority of Americans believe their State ought to have a right to opt out. We now know that seven states—Arizona, Georgia, Idaho, Louisiana, Missouri, Oklahoma, and Virginia—have already passed laws or constitutional amendments making it illegal to force anyone to buy health insurance. Their State legislatures—to me, that is how I am reading it—say, we are going to opt out whether this law passes or not.

Mr. GRAHAM. Mr. President, along that line, if I could pose a question to my colleague: How many States have joined the lawsuit saying the individual mandate is unconstitutional, if the Senator knows that number? The Senator just indicated how many States have passed State laws saying we shouldn't be required to comply with individual mandates.

Mr. BARRASSO. Seven States have already passed laws or constitutional amendments making it illegal to force someone to buy health insurance.

Mr. GRAHAM. How many States have joined the lawsuit?

Mr. BARRASSO. Twenty-six States have joined the lawsuit, including my home State of Wyoming which recently joined. New Governors have been elected and sworn into office in January, so five new States have joined the lawsuit, saying, This law isn't constitutional. People from Congress shouldn't be able to go into your home and make you buy a government-approved product if you don't want to buy it. The background of the Senator from South Carolina is superior to mine in the legal field or the courts, but it sure sounds to me as if rulings from Virginia and Florida uphold my firm belief that Congress can't make people buy products.

Mr. GRAHAM. If I may, I think the Senator is going to find this case going to the Supreme Court in a year or two—the sooner the better, as far as I am concerned. I don't know how the Court will rule, but I can understand why attorneys general would be arguing that requiring someone to do something to create activity is probably a real stretch of the commerce clause. Where does it end? There are two sides to that legal coin.

My point is, I doubt if the attorneys general of these States, who are mostly

elected—or I am sure all of them are elected—would be bringing a lawsuit to challenge the constitutionality if they believed their constituents were really for the bill. Does that make sense to my colleague, that 26 attorneys general would be suing the Federal Government in court if they believed their own citizens felt as though this were the right way to go?

Mr. BARRASSO. I think the attorneys general are making decisions based on what they believe is in the best interests of the citizens of their State, and they are saying, People of our State have rights, and we have a Constitution, and that Constitution should trump the 2,700-page health care law.

Mr. GRAHAM. Mr. President, if I could make this point to my colleague: No judge is going to ask the average person what they think, nor should they. This is a legal question. I don't know how it is going to come out. I think it is probably 50–50.

What we are doing differently, I say to my friend from Wyoming, is we are not saying we need to pass it all from Washington or repeal it all from Washington. We are saying: Allow people to comment on the product that was created on a party-line vote on Christmas Eve, in an unseemly fashion, by allowing people at the State level, through their elected representative, to have a say. That is different than a court challenge. That is different than a Washington debate. Quite frankly, if we are going to turn one-fifth of the economy upside down, I think it would be very helpful to this country to involve our fellow citizens.

This will be a constitutional academic decision made on the law. What we are trying to do, I say to my good friend from Wyoming, is to take the debate on health care to the State level so people can speak up before we lock the country into a plan that I think is going to ruin the viability of the States' budgets by expanding Medicaid to 150 percent above poverty. Is that not the purpose, to give people the chance to speak as they have never had to this point?

Mr. BARRASSO. What do people want? What do the States want? Flexibility, freedom, and choice. I know that is what people in Wyoming want. We are rugged individuals who want flexibility, freedom, and choice. I think every State ought to have the opportunity to make that decision, and that is why this bill is on the floor of the Senate.

Last week I did vote to repeal the entire Obama health care law because I think it is bad for patients and providers—the nurses and the doctors who take care of those patients—and I think it is bad for the taxpayers. I think it will bankrupt the Nation. I think what is now happening is it is also bankrupting the States. Governors, having to deal with this Medicaid mandate, are realizing that to listen to Washington, they are going to

have to take money away from education. They are going to have to take money away from public services. They ought to have a right to make a decision at the State level as to what they want to do, what laws ought to apply.

One size doesn't fit all. I know what works in Wyoming is not necessarily what works in South Carolina or West Virginia and certainly may not work in California or New York. That is why States ought to make a decision about ways to help people in their own State get the care they need from the doctors they want at prices they can afford. This massive health care law does not accomplish that.

Mr. GRAHAM. One final question, and I do appreciate the Chair's indulgence. The whole idea of the status quo being acceptable is not what we are talking about. None of us believes the current health care situation is sustainable. Medicare and Medicaid need to be reformed, but so do private health care cost increases. There are monopolies out there by insurance companies. To be able to buy across State lines makes a lot of sense to me.

Briefly, if my colleague could, what does he see—I want to repeal the bill, not just to maintain the status quo, but to replace it with a bipartisan product that does improve quality and lowers costs. Is that the Senator's position, and how can we do that?

Mr. BARRASSO. There are things we mutually must do to make it easier and cheaper for people to get the health care they need, the doctors they want, at the price they can afford. Number 1, as my colleague mentioned, make it legal for people to shop around and buy across State lines. We can't do that right now in this country. That in itself, as studies show, would result in over 10 million Americans who don't have insurance today getting insurance.

Most people get their insurance through work for the simple reason that it is a tax deduction to the company they get their insurance through, but if they buy insurance personally, individually, they have to pay taxes on that money before they pay for the insurance. So I think people who end up buying their health insurance individually ought to get the same tax benefits as those who get it through work do. That would make a big difference in bringing down the specific costs to those folks.

I think we need to have incentives that help people actually stay healthy. I ran a program in Wyoming. I was a volunteer at a program called the Wyoming Health Fairs, bringing low-cost health screenings to people. I did health reports on television called "Helping You Care For Yourself," giving people information they could use to stay healthy.

This health care law has money in it aimed at prevention, but it basically has money for jungle gyms and street lamps and pathways, but actually no incentive to get somebody to get up

and exercise and get their weight down and their cholesterol under control, their blood pressure under control.

Then I think we have to do something about the lawsuit abuse out there, which drives up the cost of care as doctors order tests not necessarily to help the patient but to make sure they are not missing some very rare condition, and that significantly adds to the cost of care, in the billions and billions of dollars every year.

Mr. GRAHAM. On that note, I would say to the Presiding Officer and to my friend from Wyoming, there seems to be a lot of ways to lower costs. The status quo is not acceptable. The solution we have chosen in a very partisan way I think is going to drive up the budget deficit and eventually lead to more people being in government-run health care at a time when the government is broke and is, quite frankly, going to take the State budget problems and make them unsustainable just by expanding Medicaid.

Our bill is pretty simple. If you think this is a very good idea, let it be tested by your Federal citizens through an opt-out provision. If you think this is a bill that most people would opt out of if they could on our side, give them a chance. The lawsuit is important, but this is a decision the Nation needs to make, and the lawsuit is one way to approach this. But the best way to come up with health care solutions is not going to court but having the Congress and the States and the people of America work together in a partnership. That is what we have not been able to achieve—a partnership where we listen to the States and the people, and from their input we pass laws in a bipartisan fashion.

That is what I hope will happen.

Mr. BARRASSO. That is why we come to the floor to discuss S. 244. The title is State Health Care Choice Act. That is what it truly is—State health care, and choice. It is a choice to be made by the States about health care because if the American people want anything, it is flexibility, freedom, and choice.

Mr. GRAHAM. I thank my colleague. I have enjoyed the discussion.

I yield the floor.

Mr. BARRASSO. I yield the floor.

#### TRIBUTE TO MAJOR GENERAL THOMAS CUTLER

Mr. LEVIN. Mr. President, for the past 8 years, MG Thomas Cutler has been the leader of the Michigan National Guard. It has been my privilege to work closely with him in his efforts to keep the Guard prepared for its missions at home and abroad. The people of Michigan have benefitted greatly from his tireless efforts, and Americans and people around the world have enjoyed the benefits of his leadership of the men and women of the Michigan Guard who have served far from home.

General Cutler came to his position with extensive knowledge of the full

spectrum of the National Guard's operations, having served in command positions in Battle Creek, Alpena and at Selfridge Air National Guard Base, working not only with Air National Guard personnel but in joint operations as well.

Over his 8 years, he was an extraordinary advocate for improvements to the State's military infrastructure, improvements that made Michigan's people safer, served units from other States that use Michigan facilities for training, and contributed greatly to the welfare of Guard members and their families. The list of ribbons we have cut and of ground we have broken to modernize Michigan Guard facilities is extensive, and the result is some of the most modern facilities in the nation.

He also skillfully led Michigan through the implementation of the 2005 round of base realignments and closures, helping to ensure that Michigan would maintain flying missions at two Air Guard bases and that the Michigan Guard could continue to effectively fulfill its missions.

General Cutler has continually sought new opportunities for the men and women under his command. Most notably among these is the Michigan National Guard's engagement with the armed forces of Latvia and now Liberia through the State Partnership Program. This program uses the civil and military skills of the National Guard to aid the development of partner nation militaries while providing Guard personnel with unique opportunities to interact and build relationships with other militaries. Most important, General Cutler has focused on the people of the Michigan National Guard—on its servicemembers and their families. He has brought to his job a keen understanding of the challenges our citizen-soldiers and airmen face, and the sacrifices of their families and communities.

On January 8, General Cutler left his position as adjutant general of the Michigan National Guard. I salute General Cutler for his service to Michigan and the Nation. The men and women of the Michigan National Guard, who have so benefitted from his passion for the Guard, will long remember his service, and I shall look back on the many times we have been together as some of my best memories.

#### HONORING OUR ARMED FORCES

SPECIALIST SHAWN A. MUHR

Mr. GRASSLEY. Mr. President, I have the sad task today of paying tribute to Specialist Shawn A. Muhr of Coon Rapids, IA, who has fallen in the line of duty in Afghanistan. Specialist Muhr was serving with the 546th Transportation Company, 264th Combat Sustainment Support Battalion, 82nd Sustainment Brigade out of Fort Bragg, NC. He was 26 years old.

Shawn's family described him as "a gentle person with an adventurous